IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13/08/2004

CORAM

THE HONOURABLE MR. JUSTICE A. KULASEKARAN

C.R.P. (NPD) No. 1264 of 2004
and C.R.P. (NPD) 1265 of 2004
and
C.M.P. No. 10426 & 10427 of 2004

CRP (NPD) No. 1264/2004

M. Velmurugan ... Petitioner

-Vs-

1. P. Srinivasan
2. P. Ravi ... Respondents

CRP (NPD) No. 1265/2004

H. Ravi ... Petitioner

Versus

1. P. Srinivasan
2. P. Ravi ... Respondents

Revisions under Article/Section 25 of the Pondicherry Buildings (
Lease and Rent Control) Act against the order dated 21-04-2004 made in RCA
No.33 and 31 of 2003 on the file of the II Additional District Judge,
Pondicherry confirming the order dated 28-08-2003 made in HRCOP No. 63 and 61
of 2001 on the file of Rent Controller, Pondicherry.

!For Petitioner : Mr. R. Subramanian in both Revisions

^For Caveators : Mr. T.P. Manoharan in both Revisions

:COMMON ORDER

The above revision petitions are listed today for admission and I
heard the learned counsel for the petitioners as well as the counsel for the
Caveators.
2. The tenants, who lost their case before the courts below are
the revision petitioners. The appellate authority, by common order dated

21-04-2004 dismissed both R.C.A. Nos. 31 of 2003 filed against HRCOP No. 61 of 2001 and RCA No. 33 of 2003 filed against HRCOP No. 63 of 2001. Aggrieved by the order passed in RCA No. 31 of 2003, CRP No. 12 65 of 2004 is filed and as against the order passed in RCA No. 33 of 2003, CRP No. 1264 of 2004 is filed by the tenants. The respondents in the above revision petitions are landlords, who have filed petitions under Section 14 (1) (b) of The Pondicherry Buildings (Lease and Rent Control) Act, 1969 for eviction against the petitioners herein.

3. The plea of the respondents is that the building, in which the petitioners are in occupation is about 93 years old and in dilapidated condition, hence needed for demolition and re-construction. It is further contended that they have obtained permission from the Pondicherry Planning Authority and they have enough fund for construction of the building. The respondents have also issued notice dated 21-12-19 98 terminating the tenancy

with effect from 01-01-1999. The Petitioners have also sent their reply on 25-12-1998. It is also seen that both the respondents and petitioners have exchanged further notices.

4. It is stated by the Petitioners that originally the property was let out to the petitioners father. After the death of their father, the petitioners have invested some amount for the business. Subsequently, one Pandurangan purchased the property, who is none other than the father of the respondents herein, however not disputed the relationship of landlord and tenant. It is averred by the petitioners that the respondents demanded higher rent and advance, which was not accepted, which is the reason for filing of petitions for eviction. It is further contended that the demised building is very strong and not require any demolition or re-construction.

5. Before the Rent Controller, the petitioners have examined themselves as sole witness (RW1) and not marked any document. The respondents have examined their father Pandurangan as PW1, Mr. A. Joseph, Civil Engineer as PW2, Mr. N. Raju, Assistant, Urban Bank, Pondicherry as PW3 and Mr. A. Sri Sankar, Junior Town Planner, Pondicherry Planning Authority as PW4 and marked Exs. P1 to P11 and Exs. X1 to X6 were marked through PW3.

6. The learned Rent Controller, after consideration of the oral and documentary evidence let in by the parties ordered eviction. Aggrieved by the said order, the petitioners have preferred appeals before the appellate authority namely II Additional District Judge, Pondicherry, which were also dismissed, hence the present revisions.

7. Arguments were advanced on behalf of the petitioners that the authorities below erred in holding that the respondents requirement is bonafide, solely on the basis of the age of the building, without reference to its condition; that the appellate authority failed to note that the respondents have not proved their financial ability to put up construction.

8. Taking into consideration of the arguments advanced by the

learned counsel for the petitioners and the provisions of Section 14 (1) (b) of The Pondicherry Buildings (Lease and Rent Control) Act and the powers conferred to the High Court under Section 25 of the said Act, I proceed to consider the case.

9. Now, let us look into Section 14 (1) (b) of The Pondicherry Buildings (Lease and Rent Control) Act, which runs as follows:-

"14. Recovery of possession by landlord for repairs or for construction.
(1) Notwithstanding anything contained in this Act, but subject to the provisions of Sections 12 and 13, on an application made by a landlord, the Controller shall, if he is satisfied-
(a) .....
(b) that the building is bona fide required by the landlord for the immediate purpose of demolishing it and such demolition is to be made for the purpose of erecting a new building on the site of the building sought to be demolished, pass an order directing the tenant to deliver possession of the building to the landlord before a specified date.

10. While interpreting the provisions of Section 14 (1) (b) of the Act, the Honourable Supreme Court in the case of P.ORR and Sons Private Limited Vs. Associated Publishers (Madras) Limited (1991) 1 Supreme Court Cases 301 held that landlord can succeed in an application under Section 14 (1) (b) of the Act only when it is established that the building is in a dilapidated condition and require immediate demolition. Subsequently, in the decision reported in Vijay Singh and Others Vs. Vijayalakshmi Ammal 1996 (6) SCC 475, the Honourable Supreme Court held that it is very much necessary to consider three elements namely (i) bonafide intention of the landlord far from the sole object only to get rid of the tenants (ii) age and condition of the building and (iii) financial position of the landlord to construct a new building according to the requirements of the building Laws. The Judgment reported in Vijay Singh and Others Vs. Vijayalakshmi Ammal 1996 (6) SCC 475 was followed by the Honourable Supreme Court in the decision reported in K.M. Abdul Razzack VS. Damodharan 2000 (4) Supreme 575.

11. Applying the principles enunciated in Vijay Singh and Others Vs. Vijayalakshmi Ammal 1996 (6) SCC 475, it is very much necessary to see whether all the three elements are satisfied by the respondents are not.

12. Exs. P2 to P5 and also the evidence of PW4, Mr. A. Sri Shankar, Junior Town Planner, Pondicherry Planning Auithority support the case of the respondents/landlords that their intention is bonafide and age and condition of the building warrant demolition and reconstruction. Ex.P7 and the evidence of PW3 satisfy the last requirement namely the financial position of the respondents to construct a new building. Hence, I confirm the orders of the courts below and hold that the respondents have satisfied the requirements of Section 14 (1) (b) of The Pondicherry Buildings (Lease and Rent Control) Act for grant of remedy of eviction sought for against the petitioners.

13. Under Section 25 of the Act, it is not permissible for the High Court, in exercise of its revisionary jurisdiction to act as appellate court to re-appraise or re-assess the evidence afresh as an appellate Court and come to a different finding contrary to the finding recorded by the court below. Followed K.M. Abdul Razzack Vs. Damodharan 2000 (4) Supreme 575 wherein in para-5 it was held as follows.

"5. ...It is not permissible for the High Court, in exercise of its revisionary jurisdiction to act as an appellate Court to reappraise or reassess the evidence afresh as an appellate Court as an appellate Court and come to a different finding contrary to the finding recorded by the court below. We, therefore, hold that the High Court while allowing the revision transgressed its jurisdiction conferred upon it under Section 25 of the Act."

14. It is also to be remembered that the Honourable Supreme Court in the decision reported in P.S. Pareed Kaka and others Vs. Shafee Ahmed Saheb - (2004) 5 Supreme Court Cases 241 held that the High Court has jurisdiction to go into the legality or correctness of the decision, which includes the power to appreciate evidence and that the High Court can interfere with the finding of fact also. The examination as to the correctness involves appreciation of evidence and that the High Court can interfere with the finding of the Rent Controller is entirely improbable.
15. In the case on hand, I do not find any such improbability in the orders of the Courts below, hence, the principles enunciated in the decision reported in K.M. Abdul Razzack Vs. Damodharan 2000 (4) Supreme 575 is squarely applicable to the facts and circumstance of the case.

16. For the reasons mentioned above, the revision petitions fail and the same are dismissed as devoid of merits. No costs. Consequently, connected CMPs are closed.

17. The learned counsel appearing for the petitioners pray this Court to grant sufficient time of not less than nine months for vacating and delivering vacant possession of the property by the petitioners. Hence, nine months time is granted, from today, to vacate and handover vacant possession to the respondents provided the petitioners file an affidavit within one week from today to that effect, failing which the petitioners are directed to handover the possession within four weeks from today.

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Index : Yes
Internet : Yes

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